



20 MAY 2008

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Friedrich Kueffner
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In re Application of
FORSTNER, Klaus
U.S. Application No. 10/556,652
PCT No.: PCT/DE04/00515
Int. Filing Date: 15 March 2004
Priority Date: 13 May 2003
Attorney Docket No.: HKH-23PCT
For: METHOD AND DEVICE FOR
DETERMINING BLOOD
COMPONENTS USING RATIOMETRIC
ABSOLUTE PULSE SPECTROSCOPY

DECISION ON REQUEST

This decision is issued in response to applicant's "Response to Decision on Request" filed 04 March 2008, treated herein as a renewed petition under 37 CFR 1.181. No petition fee is required.

BACKGROUND

On 15 March 2004, applicant filed the above-captioned international application which claimed a priority date of 13 May 2003 and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 November 2004. Pursuant to 37 CFR 1.495, the thirty-month period for paying the basic national fee in the United States expired at midnight on 13 November 2005.

On 12 November 2005, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by, inter alia, the basic national fee; a copy of the international application; an unexecuted declaration; and a preliminary amendment.

On 27 September 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497 was omitted. A new oath or declaration in compliance with 37 CFR 1.497 and a

surcharge for providing the oath or declaration later than 30 months from the priority date were required. The notification set a two-month time limit in which to respond.

On 31 January 2008, the United States Elected Office mailed a Notification of Abandonment under 37 CFR 1.495 (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing Requirements mailed 27 September 2006 within the time period set therein.

On 11 February 2008, applicant filed a "Request to Withdraw Holding of Abandonment." In a decision dated 26 February 2008, applicant's petition was dismissed without prejudice.

On 04 March 2008, applicant filed a renewed petition under 37 CFR 1.181

DISCUSSION

Applicant states in their present petition that a declaration and power of attorney was received at the United States Patent and Trademark Office on 16 November 2006. A review of the present application reveals that the declaration is not located therein. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"If a receipt of any paper filed in the Patent and Trademark Office is desired, it may be obtained by enclosing with the paper a self-addressed postcard identifying the paper. The Patent and Trademark Office will stamp the receipt date on the card and place it in the outgoing mail.

A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

Here, applicant has provided a copy of the declaration and a copy of their date-stamped filing receipt. The receipt identifies the application by the application number, title of invention, and attorney docket number. The receipt itemizes, among other things, a declaration. The receipt is stamped "Rec'd PCT/PTO 16 November 2006" across its face is sufficient to indicate that the above item was in fact received in the Office on 16 November 2006.

CONCLUSION

Applicant's petition under 37 CFR 1.181 is GRANTED.

In view of the declaration filed 16 November 2006, the Notification of Abandonment (Form PCT/DO/EO/909) dated 31 January 2008 is hereby VACATED.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.

A handwritten signature in black ink, appearing to read 'Anthony Smith', with a long horizontal flourish extending to the right.

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